Supreme Court, U. S.
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NO. 79-834

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1979

AUTOMOBILE DRIVERS & DEMONSTRATORS UNION LOCAL No. 382, ET AL.,

APPELLANTS,

v.

THE DEPARTMENT OF RETIREMENT SYSTEMS OF THE STATE OF WASHINGTON,

APPELLEE.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION TO DISMISS

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NO. 79-834

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1979

AUTOMOBILE DRIVERS & DEMONSTRATORS
UNION LOCAL No. 882, ET AL.,
APPELLANTS,

v.

THE DEPARTMENT OF RETIREMENT
SYSTEMS OF THE
STATE OF WASHINGTON,
APPELLEE.

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The appellee moves the Court to dimiss the appeal herein on the ground that it is manifest that the questions on which the decision of the cause

depend are so unsubstantial as not to need further argument.

I.

ARGUMENT

The case presents no substantial question not previously decided by this court.

It is well established that states are afforded a wide scope of discretion in enacting laws which classify groups of citizens differently from others without running afoul of the equal protection clause of the 14th Amendment to the United States Constitutuion. Where "fundamental rights" or "suspect classifications" are not involved, the classification will be upheld unless it is wholly irrelevant to the achievement of a legitimate state objective. McGowan v. Maryland, 366 U.S. 420 (1961);

New Orleans v. Dukes, 427 U.S. 297 (1976). A classification will not be set aside if any state of facts reasonably may be conceived to justify it. McGowan, supra.

Here, the classification is for purposes of membership in a state-wide retirement system for law enforcement officers and fire fighters. In Washington, retirement and pension benefits granted to public employees are deferred compensation for services rendered. Bakenhus v. City of Seattle, 48 Wn.2d 695, 296 P.2d 536 (1956). Thus, not surprisingly, there is no claim that this case involves "fundamental rights" or a "suspect classification". Rather, the sole claim is that the classification is wholly irrelevant to the accomplishment of a legitimate state purpose.

The Washington State Supreme Court correctly analyzed the case before it when it stated:

> "The relevant inquiry then is whether reasonable grounds may be conceived for distinquishing between police officers who fall within the statutory definition of 'law enforcement officer' and port police officers, performing functionally identical duties, who do not."

J.S.App. A-9. Eight members of the court found that there were reasonable distinctions. Among the distinctions found by the court was the fact that at the time of the creation of the pension system in question in 1970, port police officers were not fully commissioned police officers. At the time port police officers became fully commissioned, legislative experience with funding the retirement system may well have made it imprudent or prohibitively costly to include port

police. Similarly, port districts have the authority to establish their own pension and retirement systems (RCW 53.08.170) a factor which the legislature may have concluded to militate against including port police in the deferred compensation program of the state.

In this connection, appellants seem to claim that because they are fully commissioned police officers performing duties identical to those of city police and county sheriffs, they are entitled to a specific form of deferred compensation, i.e., membership in the LEOFF pension system. However, not all fully commissioned "law enforcement officers" in Washington are members of the LEOFF system. One of the largest groups of Washington law

enforcement officers, the Washington State Patrol, have their own separate retirement system with pension benefits substantially different from those afforded members of the LEOFF system. See, Chapter 43.43 RCW. Similarly, the fully commissioned police officers employed by the two major state universities, the University of Washington and Washington State University, are members of the Washington State Public Employees Retirement System, Chapter 41.40 RCW. Thus, in Washington, the legislature has never intended that "law enforcement officer"--defined in terms of "duties"--is to be a generic classification for pension purposes.

Another distinction found by the court deals with the territorial responsibilities of port police. County and city law enforcement officers'

territorial jurisdiction is widespread, whereas port police jurisdiction is confined to the territorial area of port property. J.S.App. A-9.

Finally, although the "functional" duties of port police officers may be identical with those of county and city law enforcement officers, the "risk factor" in performing those duties may not be the same. For example, the most dangerous situation faced by city and county police officers is the resolution of domestic disputes. It is highly likely, and the legislature may have perceived, that port police, given their limited territorial jurisdiction, are unlikely to face domestic disputes on a routine basis. Given that port police first became fully commissioned police officers in 1974 (Laws of 1974, 1st Ex. Sess., Chapter 62, §1, codified

as RCW 53.08.280), the legislature may have wished to refrain from permitting port police membership in the LEOFF system until sufficient experience had been accumulated detailing the actual dangers and injury rate experienced by port police. There is no requirement that the classification be perfectly free from discrimination. The legislature may tackle one problem at a time. Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483 (1954).

In sum, this is a "garden variety" "minimal scrutiny" equal protection case. Eight members of the Washington State Supreme Court, well versed in local law and conditions, determined that the exclusion of port police officers from membership in the LEOFF retirement system was

rationally related to the accomplishment of a legitimate legislative purpose. One member concluded that it was not. Thus, this case presents no substantial federal question. The class of people affected is minimal, the law governing the case is clear and undisputed, and the result reached by the Washington State Supreme Court is correct.

II.

CONCLUSION

Wherefore, appellee respectfully submits that the question upon which this cause depends is so unsubstantial as not to need further argument, and

appellee respectfully moves the Court to dismiss this appeal.

DATED this 31ST day of DECEMBER, 1979.

Respectfully submitted,

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